AGREEMENT
BETWEEN

THE U.S. DEPARTMENT OF AGRICULTURE,
COMMODITY CREDIT CORPORATION,
AND FARM SERVICE AGENCY
AND

_____

I. PURPOSE

This purpose of this Agreement between the U.S. Department of Agriculture (USDA), Commodity Credit Corporation (CCC) and Farm Service Agency (FSA), and _____ is to declare this facility located in _____ County, _____ State, as a "Qualified Biomass Conversion Facility" for the Biomass Crop Assistance Program (BCAP).

Under BCAP, matching payments are generally authorized for the delivery of eligible material for the collection, harvest, storage, and transportation to a Qualified Biomass Conversion Facility.

II. GENERAL PROVISIONS

The intent of this Agreement is to allow, where deemed desirable by the USDA, CCC, and FSA and certain biomass conversion facilities, for such a facility to be designated as a Qualified Biomass Conversion Facility under the BCAP. Such designation will enable certain payments to certain persons or entities made by the Qualified Biomass Conversion Facility to be "matched" by CCC as described below in Section VI, D.

A Qualified Biomass Conversion Facility is a "Biomass Conversion Facility" that has met and continues to meet the terms of this Agreement.

This Agreement shall become effective immediately upon the final signature of each authorized party and shall act as a letter of commitment by the Qualified Biomass Conversion Facility to: (1) convert or propose to convert eligible material into heat, power, bio-based products, or advanced biofuels and (2) provide certain information to FSA to facilitate its making matching payments.

This Agreement provides for a partnership between USDA, CCC, and FSA and the Qualified Biomass Conversion Facility. The goals for the BCAP matching payments are to:

1. Provide matching payments for delivery of eligible material to a Qualified Biomass Conversion Facility to persons or entities; and

2. Establish guidelines for Qualified Biomass Conversion Facilities that receive eligible material to provide certain information to FSA.

This Agreement is not intended to supersede any rules or regulations that have been or may be promulgated by USDA, CCC, or FSA or any rules or regulations that may govern biomass conversion facilities. In the event of a conflict between the terms of this Agreement and the applicable rules or regulations, the latter shall prevail.

III. AUTHORITY

BCAP is authorized by Title IX of the Farm Security and Rural Investment Act of 2002, 7 U.S.C. 8101 *et seq.*, as amended. Other authorities may also apply.

IV. DEFINITIONS

USDA, CCC, FSA, and _____ agree that the definition of:

A. "Arm's-length transaction" means a transaction between ready, willing, and able parties who are not affiliated with or related to each other and have no security, monetary, or stockholder interest in each other, as determined by CCC, except that members of: (1) an association of agricultural producers; (2) farmer cooperative organizations; or (3) a farmer cooperative may deliver and sell at market rates eligible material to biomass conversion facilities owned by such associations, organizations, or cooperatives notwithstanding whether they have a monetary or stockholder interest in each other.

B. The BCAP Purchase List ("List") means a spreadsheet, in the format provided on the FSA web page at www.fsa.usda.gov that contains the following elements:

(1) Qualified Biomass Conversion Facility identification number and name, which will be provided by CCC upon execution of this Agreement;

(2) The name(s) of the Qualified Biomass Conversion Facility authorized representative(s) who purchased and received the eligible materials;

(3) Date of the actual delivery of the eligible material;

(4) Eligible material recorded and characterized by common use name such as corn stover or switch grass;

(5) Net weight of eligible material purchased, recorded in total tons (2,000 lb. ton basis) and the dry-ton (2,000 lb. ton basis) equivalent;

(6) Payment total or price for each purchase;

(7) Price per dry ton paid;

(8) The name of the person or entity that delivered the eligible material; and

(9) The eligible material owner's(s) name at the time of delivery.

C. "Biomass Conversion Facility" means a facility that converts or proposes to convert renewable biomass into heat, power, bio-based products, or advanced bio-fuels.

D. "Eligible Material" means Renewable Biomass except for: (1) whole grain derived from a crop of barley, corn, grain sorghum, oats, rice, and wheat, and oilseeds such as canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts, pulse crops such as small chickpeas, lentils, and dry peas; and dairy products, sugar, and wool; and cotton boll fiber; (2) animal waste and byproducts including fats, oils, greases, and manure; (3) food waste and yard waste; or (4) algae. The eligible materials for a matching payment are described in the list of eligible materials posted at: www.fsa.usda.gov

Additional material may be periodically added or deleted from consideration as eligible by the CCC through its written consent.

E. "Eligible Material Owner" means the person or entity that has legal title to the eligible material at the time of delivery.

F. "Qualified Biomass Conversion Facility" means a Biomass Conversion Facility that has entered into and met the terms of this Agreement.

G. "Renewable Biomass" means (1) Materials, pre-commercial thinnings, or invasive species from National Forest System and Bureau of Land Management that: (a) are byproducts of preventive treatments that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health; (b) would not otherwise be used for higher-value products; and (c) are harvested in accordance with applicable law and land management plans and the requirements for old growth maintenance, restoration, and management direction of sections 102 (e)(2), (3), and (4) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512) and large-tree retention provisions of subsection (f); or (2) any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including: Renewable plant material (including feed grains, other agricultural commodities, other plants and trees, and algae), and waste material (including crop residue, other vegetative waste material (including wood waste and wood residues), animal waste and byproducts (including fats, oils, greases, and manure), food waste, and yard waste.

V. QUALIFIED BIOMASS CONVERSION FACILITY ELEMENTS

_____ will:

A. Develop and maintain a List, as defined above, for renewable biomass purchases and make available upon request this List for examination by USDA representatives, with the understanding that submission of the List by the Biomass Conversion Facility is offered to CCC as a true and correct copy.

B. Record retention will include but is not limited to the spreadsheet, books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to BCAP. Records will be maintained and retained for no less than three years from the date of payment for such renewable biomass purchases.

C. Provide or maintain access to and use of commercial weight scales that are certified for accuracy by applicable State or local authorities and accurate moisture measurement equipment to facilitate the determination of the dry-ton weight equivalent of actual tonnage delivered.

D. Permit upon request by USDA, CCC, or FSA an inspection of biomass deliveries.

E. Maintain and submit evidence of compliance with all applicable Federal, State, tribal, and local environmental laws and regulations.

F. Purchase eligible material only through an arm's-length transaction.

G. Allow USDA, CCC, or FSA to make public general information about the Biomass Conversion Facility and its renewable biomass needs.

H. Ensure that the elements of the List, as described above, appear on the receipt issued at time of delivery or invoice issued at time of payment.

I. Receive no payments or reimbursements from USDA or CCC by virtue of signing this Agreement; this Agreement will serve neither as a fiscal or funds obligating document, nor as an instrument for the procurement of goods or services by USDA or CCC.

J. Maintain compliance with all applicable Federal, State, tribal, and local environmental, health, and safety laws, regulations, and ordinances.

K. Complete and adhere to the Qualified Biomass Conversion Facility overview as provided in Attachment 1, which provides CCC and FSA with information to facilitate the program.

L. Complete an AD–1047 Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions form with Attachment 1. The AD–1047 will require the owners of applying Biomass Conversion Facilities to certify that the applying facility and its principals are in compliance with 7 CFR Part 3017 and not subject to disbarment or suspension.

M. Notify the FSA contact in paragraph E of Section VII of any changes in operations that could impact its operation which include, for example, a change in biomass utilization, or any other operational changes that may affect input and/or output capacity.

N. Allow USDA, CCC or FSA to release to the general public the following information only: name of the facility; location of the facility (physical address); email address and phone number of the facility; types and quantities of eligible material the facility may process; and when eligible material is received. The release of any additional information by CCC or FSA shall only be in accordance with the provisions of Section VI. E, below.

VI. FEDERAL COMMITMENTS

USDA, CCC, and FSA will:

A. Develop and maintain a list of all participating Qualified Biomass Conversion Facilities.

B. Conduct periodic compliance reviews of the participating Qualified Biomass Conversion Facilities.

C. Provide information to eligible material owners regarding matching payments.

D. Subject to the availability of funds, provide payments to the eligible persons and entities that deliver eligible material to a Qualified Biomass Conversion Facility at a rate of $1 for each $1 per dry-ton equivalent provided by the biomass conversion facility in an amount not to exceed $45 per ton. Eligible persons and entities are eligible to receive these matching payments for a period of no more than two years from the date of receipt of their first matching payment. The terms and conditions of receipt of matching payments are subject to change in accordance with the BCAP regulations.

E. Not release any additional information of the Qualified Biomass Conversion Facility beyond that information listed in Section V. N, above, unless it first obtains from the Qualified Biomass Conversion Facility express written permission to release such additional information.

VII. **OTHER PROVISIONS**

A. This Agreement may be amended at any time only by mutual written agreement of the parties.

B. This _____ Biomass Conversion Facility and USDA, CCC, and FSA agree that, to the extent possible under applicable law, each party will be solely responsible for its own acts, omissions, and the results thereof, and will not be responsible for the results thereof caused by the acts or omissions of the other party.

C. This Agreement will be in effect on the date of the final signature and will continue for the later of three years thereafter or for as long as USDA, CCC, and FSA are authorized to carry out the BCAP.

USDA, CCC and FSA may take up to 15 business days after the final signature to notify its offices and the public that _____ Biomass Conversion Facility has been designated a qualified Biomass Conversion Facility.

Parties acknowledge that this Agreement is subject to modification after the BCAP regulations are published in the Federal Register.

D. Notwithstanding paragraph C of this section, this Agreement may be terminated by any Party upon 20 calendar days written notice.

E. The USDA, CCC, FSA contact for this Agreement is State office contact, [insert State office contact name, address, phone, email]:

_____

_____

_____

_____ .

F. The _____ Qualified Biomass Conservation Facility contact for this Agreement is [insert authorized representative, name(s), address, phone, email]:

_____

_____

G. Any data collected by the Parties to this Agreement shall be handled in full compliance with the privacy and security requirements of Section 1619 of Public Law 110-246 (see Attachment 2), Section 2004 of Public Law 107-171, the Privacy Act, and other related and relevant Federal legislation, as well as with any specific directives and policies promulgated by USDA, CCC, or FSA.

H. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information,

political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of Discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

I. By signing this Agreement _____ acknowledges and agrees to all of the following: CCC may make the payments described in Section VI. D of this Agreement in reliance upon this Agreement, and in signing this Agreement the facility is asserting now and on an ongoing basis that, until actual written notice to the contrary is given to CCC, there is full and continuing compliance by the facility with all of the terms and conditions of this Agreement. Should the facility fail to comply in full with all of the terms and conditions of this Agreement, some or all of the following will apply, as determined by CCC: the facility will, on demand of CCC, reimburse, with interest, CCC for all matching payments to all individuals or entities who received such payments with respect to any eligible material with respect to which the facility is not in compliance with this Agreement, with such interest to run from the time of the relevant CCC disbursement at a rate that shall be the highest collected or allowed CCC on other claims in other programs. Further, the facility understands that this liability may be in addition to any other liability that may run against the facility under the law, including sanctions, civil and criminal, for false representations or fraudulent claims, including, but not limited to, provisions that appear in 18 U.S.C. 1001 and 15 U.S.C. 714m. It is understood that the failure of the facility to advise CCC in a timely way of a breach of the Agreement will be considered, in light of the ongoing assertion of compliance imposed by this Agreement, to be a false representation of compliance.

So agreed:

A. For the:

_____ _____

[Name of authorized representative] Date
[Title]
[Name of Biomass Conversion Facility]

B. On behalf of the USDA, CCC, and FSA:

_____ _____

[Name of SED] Date
State Executive Director
[State] State FSA Office